IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 3786 OF 2007

IN

FIRST APPEALNO. 1165 OF 2007

YALLAPPA GANGARAM KURHADE & ORS. ...APPLICANTS.

VS.

VISHWANATH DATTATRAYA KARHADKAR

AND ORS. ...RESPONENTS.

MR. V.S.GOKHALE FOR THE APPLICANTS.

MR. R.S.APTE FOR THE RESPONDENTS.

CORAM: J.N.Patel & A.A.Sayed,JJ.

DATE : August 21, 2007.

P.C.

1. The learned Counsel for the applicant has filed this application seeking extension of time to enable the applicant to deposit amount as per the Order passed by this Court on 10th April, 2007 and for other ancillary reliefs like the amount so deposited by the applicant-appellant be invested in fixed deposit of Nationalised Bank and the respondents should not be allowed to withdraw the said amount and for stay of the execution of Judgment and Decree.

2. On 10th April, 2007, this Court had disposed of the Civil Application NO. 2041-07 by passing an Order

directing the applicant-appellant to deposit the decreetal amount with costs and further to deposit mesne profits as per the Judgment & Order. The applicant-appellant could not comply with the said Order and, therefore, he has taken out this application.

3. This Court made it clear to the applicant-appellant that unless he gives an undertaking to this Court, this Court would not consider his application for extension of time to deposit the Amount, as the Order dated 10th April, 2007 was conditional and self-operative. Accordingly, the learned Counsel for the applicant-appellant has filed the undertaking of the appellant- applicant and he confirms that the undertaking given by the applicant-appellant is read over, explained and understood by him and he would abide by the undertaking.

4. The learned Counsel appearing for the Decree Holder submits that this Court may pass appropriate Orders in the matter but strongly objected for extension of the time for making payment as per the undertaking.

5. In our view, in order to give a fair opportunity to the applicant-appellant and as the applicant has shown his bona fides to deposit the amount by tendering the undertaking, this Court is inclined to consider his request. As such, the Undertaking is taken on record and marked "X" for identification. The undertaking given to this Court is accepted. Consequently, Our Order, dated 10th April, 2007 stands modified to the extent of giving extension of time to the applicant to make payment as per

the undertaking given to this Court, the amount to be deposited in the Trial Court. On such amount being deposited, the Respondent - Decree holder would be entitled to withdraw the same from Trial Court. The application stands disposed of accordingly.

6. Parties to act on an authenticated copy of this Order, duly authenticated by the Associate / P.A. attached to this Court.

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[J.N.Patel, J.]

[A.A.Sayed, J.]